

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, charitable, or a governmental body receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. (This is a GIL).

December 21, 1999

Dear Xxxxx:

This letter is in response to your letter dated October 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please accept this letter as a formal request for technical advice concerning a Retailer's Occupation Tax issue.

In 1999, our new entity, COMPANY, registered to do business in the State of Illinois. The primary product of COMPANY is a 'KIT' which is an uncooked, make-it-yourself food product for human consumption. The kit includes preformed pizza crusts, sauce pouches, cheese packets (some are sold with additional ingredients) and instructions to assemble and bake three pizzas at home. As the KITS are unassembled and uncooked, they require refrigeration.

The KITS are primarily sold as fundraisers to Illinois schools, churches and other nonprofit groups out of our sales office located in Alsip, Illinois. It is our understanding that the tax implication to COMPANY is minimal, as all our sales are treated as sales for resale. However, we are getting questions from our nonprofit customers regarding their sales tax responsibilities when they make sales at retail of our KITS.

Under Reg. § 130.2005. Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Person, it states:

a) Sales by Nonprofit Service Organizations.

Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or organizations and other nonprofit social, athletic or recreational organizations, lodges, patriotic organizations, fraternities, sororities, professional and trade associations, civic organizations, labor unions and other nonprofit persons who are not exclusively charitable, religious or educational organizations are

liable for Retailers' Occupation Tax when selling tangible personal property at retail to members, guests or others. The same is true of exclusively charitable, religious or educational organizations and institutions with certain limited exceptions.

1) Scope of the Exemption.

A) There still are some very limited exemptions from the Retailers' Occupation Tax for sales by exclusively charitable, religious and educational organizations and institutions. However, the exemption is not available unless the selling organization or institution does qualify as an "exclusively" charitable, religious or educational organization or institution.

B) It is not enough simply to be a nonprofit organization or institution. In case of doubt concerning any such seller's Retailers' Occupation Tax status, apply to the Department of Revenue for a letter ruling, submitting copies of the Charter or Constitution and By-laws and other relevant information for this purpose.

C) The exemption that is available under some circumstances for sales by exclusively charitable, religious or educational organizations or institutions is not available in any situation, for example, to sales by such other kinds of nonprofit organizations as civic clubs, nonprofit social and recreational organizations, patriotic organizations, lodges and their auxiliaries, trade associations, etc. Even though the latter types of organizations do much good charitable work, they are not "exclusively" charitable organizations under Illinois Supreme Court decisions, so any retail selling which they do would be subject to the Retailers' Occupation Tax.

D) Some of the kinds of organizations which qualify as exclusively charitable organizations are Parent-Teacher organizations, the American National Red Cross, Community Fund or United Fund organizations, the Y.M.C.A., the Y.W.C.A., Boy Scout organizations and Girl Scout organizations.

E) Exclusively charitable, religious and educational organizations incur Retailers' Occupation Tax liability when they engage in selling tangible personal property at retail except in three situations.

3) Noncompetitive Sales.

A) The second exception is that sales by exclusively charitable, religious or educational organizations are not

subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments.

B) The Attorney General has laid down the following tests for determining that such selling is noncompetitive:

i) The transactions are conducted by members of the charitable entity and not by any franchisee or licensee.

ii) All of the proceeds must go to the charity.

iii) The transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Department of Revenue.

iv) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.

C) In addition, the Attorney General has stated that there are these further considerations for the purpose of furnishing some guides to the resolution of questions raised by each individual situation:

i) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

ii) The character of the particular sale, and the real practical effect upon punitive competition.

D) Under this second exception, examples of exempt sales are infrequent sales of cookies, doughnuts, candy, calendars or Christmas trees by Scout organizations or by other exclusively charitable organizations or by exclusively religious organizations. In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization which conducts the sale, rather than the acquisition of property.

E) Even if the sale to the public occurs only once a year, the charitable or religious organization which conducts the sale would incur Retailers' Occupation Tax liability if it sells hats, greeting cards or other items for which the dominant motive of the purchase is the acquisition of the property rather than the

exchanging of the property merely as a token for the making of a donation.

We respectfully request a ruling as to whether the sale at retail of our KIT product by 'exclusively charitable organizations' qualifies under exception 3) as 'noncompetitive sales'. We believe the retail sale of our KITS meets the four criteria laid down by the Attorney General:

1. The transactions are conducted by members of the charitable entity and not by COMPANY.
2. All of the proceeds go to the charity.
3. The transaction is not a continuing one but held either annually or a reasonably small number of times within a year.
4. The dominant motive of most customers of KIT is the making of a charitable contribution, with the transfer of the KIT being incidental and secondary to the charitable contribution.

It is our position that the nature of the item and the character of the sale have no practical effect on competition. Because KITS must be assembled and cooked at home, they do not compete with take-out or delivery pizza. Nor do they compete with pizza products found in a grocery store due to their quality and the 'COMPANY' name that stands behind them.

Thank you for your prompt attention to this matter and please direct your response to my attention at the address listed below. If you have any further questions please feel free to contact me directly at #####.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, charitable, or a governmental body receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an Illinois "E" number to qualify. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

These organizations are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4).

An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. In regards to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. If such sales are made to the public at large the selling activity is subject to the Retailers' Occupation Tax. See section 130.2005(a)(2) through (a)(4). In determining whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. For example, if a religious organization sells literature or other items of tangible personal property that would place them in competition with religious bookstores, the sales generally would not be primarily for the purpose of the selling organization. However, sales of choir robes or like tangible personal property to their members would generally be primarily for the purpose of the selling organization. We urge these organizations not to be cavalier in determining the nature of their sales as the Department cannot grant a binding determination in the context of a General Information Letter.

We are unable to rule as to whether sales by the exempt entities you sell your kits to are noncompetitive because we do not have enough information. Generally, however, items that are also sold in stores like cookies and pizza kits, are competitive sales when sold by exempt entities. Please note that even though it is possible that the KITS you sell will not be considered noncompetitive sales when sold by exempt entities, the sales may be considered under the category of occasional dinners, socials or other similar activities.

Occasional dinners, socials or other similar activities that are conducted by an exempt organization are not taxable, whether or not such activities are open to the public. Section 130.2005(a)(4)(A), enclosed, states that this exemption extends to occasional dinners, carnivals, bazaars and the like. For purposes of this exemption, "occasional" means not more than twice in any calendar year. Further, the regulations provide that where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable. Please see the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(4)(B).

Further, if organizations engage in ongoing selling activities, such as Little League concession stands, sales of items in a thrift shop run by a church, or more than two sales a year, the organization must also register with the Department as retailers, file returns and remit tax. Such organizations must provide their suppliers with Certificates of Resale when making purchases for resale. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b), enclosed. A valid Certificate of Resale must contain the following:

1. A short statement from the purchaser that the items are being purchased for resale;

2. The seller's name and address;
3. The purchaser's name and address;
4. The purchaser's signature and date of signing;
5. A sufficient identification or description of the items purchased for resale; and
6. One of the following:

The purchaser's registration number with the Illinois Department of Revenue,

The purchaser's resale number issued by the Illinois Department of Revenue, or

A statement that the purchaser is an out-of-state purchaser who will sell only to purchasers located outside the State of Illinois

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.